

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27446

**FILE:** B-213599.2**DATE:** February 15, 1984**MATTER OF:** Builder's Security Hardware, Inc.**DIGEST:**

1. Where doubt exists concerning the date the protester became aware of the basis of protest, GAO resolves doubt in favor of the protester.
2. Where the protester vacated its previous business address, had no regular business address, picked up mail at its previous business address, and alleges that it filed its original protest and claim for proposal preparation costs and request for reconsideration within 10 working days of receiving knowledge of initial adverse agency action and our prior decision, respectively, which were both mailed to the protester's previous business address, the protest and claim and the request for reconsideration are timely.
3. Where the protester fails to show that but for the cancellation of the procurement it had a substantial chance for award, claim for proposal preparation costs is denied.

Builder's Security Hardware, Inc. (Builder's), requests that we reconsider our decision in Builder's Security Hardware, Inc., B-213599, December 7, 1983, 83-2 CPD \_\_\_, in which we dismissed Builder's claim for proposal preparation costs because it was filed in connection with an untimely protest. Builder's request for reconsideration is based on its contention that its protest and claim were, in fact, timely filed with this Office.

We find the protest and claim to have been timely, but deny both.

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The protest involved request for proposals (RFP) No. 3-82-1-3671, issued by the Small Business Administration (SBA) for the delivery of six types of padlocks and padlock sets. The RFP was issued in order to complete a defaulted subcontract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). Section 8(a) authorizes the SBA to enter into contracts with any government agency with procuring authority and to arrange for performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. SBA canceled the RFP after it was determined that award of the procurement contract to a non-8(a) firm would not be in accordance with the policy of the 8(a) program to award contracts to socially and economically disadvantaged small business concerns.

We dismissed Builder's claim because after the SBA denied Builder's protest and claim for proposal preparation costs by letter dated September 26, 1983, Builder's did not file its claim with this Office until October 31, 1983, more than 10 working days after Builder's had actual or constructive knowledge of the initial adverse agency action taken on its protest and claim. 4 C.F.R. § 21.2(a) (1983).

Builder's contends that it vacated its previous business address in May 1983 and currently has no regular business address. Builder's states that it picks up mail at its previous business address usually once or twice a month and did not receive a copy of SBA's September 26, 1983, letter, which was mailed to Builder's previous business address, until October 22, 1983, at the earliest. Further, although our prior decision is dated December 7, 1983, Builder's contends that its request for reconsideration filed on January 5, 1984, is timely because Builder's did not receive a copy of our prior decision until it was picked up on December 22, 1983, at its previous business address. See 4 C.F.R. § 21.9(b), (1983).

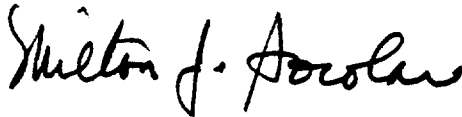
We resolve doubt surrounding the timeliness of a protest in favor of the protester. Weardco Construction Corp., B-210259, September 2, 1983, 83-2 CPD 296. Builder's alleges that it filed its claim on October 31, within 10 working days of receiving knowledge of the SBA's adverse action on its protest and claim. Builder's also argues that it filed its request for reconsideration on January 5, within 10 days of receiving knowledge of our prior decision. 4 C.F.R. § 21.9 (b). Therefore, we will examine the merits of Builder's protest and claim.

Builder's contends that SBA improperly canceled the procurement after offers were submitted on an unrestricted basis and, therefore, it is entitled to proposal preparation costs.

With regard to the claim, we have held that the award of proposal preparation costs is only justified where the protester shows both that the government's conduct towards the protester was arbitrary and capricious, as opposed to merely negligent, and that, if the government had acted properly, the protester would have had a substantial chance of receiving the award. Tracor Marine, Inc., B-207285, June 6, 1983, 83-1 CPD 604.

As to the latter test for entitlement to proposal preparation costs, Builder's does not allege that it would have had a substantial chance of receiving the award had SBA not canceled the procurement. In fact, SBA informed Builder's that it would have made award to another offeror if it had made any award. We therefore conclude that Builder's has failed to demonstrate that, if the government had not canceled the procurement, Builder's would have had a substantial chance of receiving the award. Accordingly, we need not consider whether SBA's conduct toward Builders was arbitrary or capricious.

The request for proposal preparation costs is denied.

*for*   
Comptroller General  
of the United States